Kunja Knitting Mills U.S.A., Inc. *and* International Ladies' Garment Workers' Union, AFL–CIO. Cases 11–CA–13055, 11–CA–13276, 11–CA–13364, and 11–CA–13458

April 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On May 31, 1990, Administrative Law Judge Lowell Goerlich issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to adopt the judge's rulings, findings,[1] and conclusions as modified and to adopt the judge's recommended Order as modified and set forth in full below.

We agree with the judge's findings that the Respondent violated Section 8(a)(1) of the Act as set forth in his decision, violated Section 8(a)(3) and (1) of the Act by discharging Chyrel Burroughs, Michael Moody, Steven Anthony Smith, and Gena Hemingway, and violated Section 8(a)(4) and (1) by discharging Margaret Gail Rogers. We agree with the judge's finding that the Respondent violated Section 8(a)(1)[2] by discharging and disciplining Lester Smith, but we find it unnecessary to pass on his finding that Smith's discharge and discipline also violated Section 8(a)(4) because the remedy would be the same in any event.

The judge failed to make findings and conclusions on several allegations of the complaint, although he did fully set forth the relevant facts. He also failed to order the Respondent to expunge from its files any reference to the unlawful discipline of Lester Smith. We shall address these complaint allegations and include the expunction language.

1. The complaint alleges that Supervisor Wallace Brown threatened an employee with discharge because of his union activity. The credited evidence as set forth by the judge shows that Brown called Steven Smith on October 20, 1988,[3] after Smith had been terminated and told Smith that, in his opinion, Smith and the other discriminatees had been fired for their union activity. Although this statement does not establish that Smith was in fact threatened with termination, it does establish that Brown informed him that he had been fired for his union activity. This is a minor variance between the complaint allegation and the proof, and the issue has been fully litigated. Therefore, we find that the Respondent violated Section 8(a)(1) by informing Smith that he had been fired for his union activity.

2. The complaint alleges that the Respondent created the impression that its employees' union activities were under surveillance. According to the credited testimony, Gena Hemingway was called into General Manager Park's office and accused of ''taking names to get a Union started.'' We find that by this conduct the Respondent created the impression that the union activities of certain employees were under surveillance and violated Section 8(a)(1) of the Act.

3. The complaint alleges that the Respondent threatened its employees with plant relocation in order to discourage union organization. The judge credited the testimony of Michael Moody that on September 15, Supervisors Bill Wong (Hwang) and Turberville both told him that before the Company would let a union come in, it would close down and relocate. The judge found that the Respondent unlawfully threatened the employees with plant closure, but made no finding regarding the threat to relocate the plant. We find that the threat to relocate also violated Section 8(a)(1).

4. In *Wright Line*[4] the Board established that if the General Counsel makes a prima facie showing that protected activity was a ''motivating factor'' in the employer's decision to take disciplinary action, the burden shifts to the employer to demonstrate that the action would have taken place even in the absence of the protected activity.

The complaint alleges that the written warnings issued to discriminatees Michael Moody on September 15; Gena Hemingway on September 3, 17, and 24; Steven Smith on September 3 and 27 and October 5; and Chyrel Burroughs on September 17 violated Section 8(a)(3) and (1) under *Wright Line*. The judge found extensive antiunion animus on the part of the Respondent and fully set forth the credited evidence relevant to these allegations, but failed to address the allegations themselves. We shall do so below.

Michael Moody signed an authorization card, was a member of the ''in-plant'' organizing committee, and talked about the Union on break. He was a good producer, and three times had received a bonus for perfect attendance.

On September 15, Supervisors Bill Wong and Kevin Turberville separately had conversations with Moody

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We do not rely on the judge's finding that Lester Smith's discharge was inherently destructive of employee rights.

[3] All dates are in 1988.

[4] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

in which they told him that the Company would close and relocate the plant if the Union came in. Wong also asked Moody if he was ''part of the Union.'' We have already concluded that these conversations violated Section 8(a)(1). Later the same day, Moody was given a warning for being out of his work area. In preparation for ending his shift, Moody had stepped 10 feet away from his work station to get an airhose to clean his machine. Moody pointed out several other employees who were away from their stations, and he refused to sign the warning. There were not enough airhoses for each operator and it was common practice for employees to move about to obtain hoses and other cleaning supplies.

The judge found that Moody was an active union adherent. No evidence was presented that other employees had been warned in such circumstances, and none of the other employees pointed out at the time by Moody were warned.

From all the circumstances, including Moody's open support for the Union and the unlawful interrogation and threat occurring shortly before the warning, we find that the Respondent had knowledge of his union activity at the time of the warning. We further find that Moody was disparately treated because he was the only employee given a warning, even though others were out of their work areas. Based on the foregoing and the judge's animus finding, we conclude that the General Counsel established a prima facie case that Moody's union activity was a motivating factor behind the warning. We also find that the Respondent has not established that Moody would have been warned in the absence of his union activity.

Gena Hemingway signed a union card, talked about the Union to about 12 employees during breaks, and obtained the signature of a fellow employee who rode with her. She was consistently a high producer and received a congratulatory letter for 100-percent production during one period. On September 3, she received a warning for extending her break beyond the allotted time.

Employees received two 10-minute breaks and a 20-minute break for lunch. Supervisors could give permission to combine breaks. On this occasion, Hemingway, Steven Smith, and Lester Smith received permission to combine their breaks. Hemingway testified that she carefully noticed the time and that she was not late returning from her combined break.

Combining breaks was a common practice, and there is no evidence that the Respondent asked Hemingway's supervisor whether he had given permission for her to combine her breaks. The Respondent's animus has been demonstrated. Based on Hemingway's open support and solicitation for the Union, and the circumstances surrounding this warning including the evidence that combining breaks was an established practice and the Respondent's failure to investigate the alleged infraction, we infer that the Respondent had knowledge of Hemingway's union activity. Therefore, we find that the General Counsel established a prima facie case that the September 3 warning was discriminatorily motivated, and that the Respondent has not successfully demonstrated that Hemingway would have received this warning in the absence of her union activity.

On September 17, Hemingway was given another warning, allegedly because she was ''taking names to start a towel club.'' A towel club was a sort of lottery in which the prize was a towel. Supervisors participated in the towel clubs, and they were not uncommon in the plant. Supervisor Annette Edwards admitted that she had solicited names for a towel club, that the Respondent was aware of these activities, and that she had never been warned.

Later that day Hemingway was called into Park's office, and informed that the Respondent actually suspected her of taking names for the Union. Supervisor Edwards was present and confirmed that she had told Park that Hemingway was taking names to get a union started. Based on the Respondent's virtual admission that the warning was issued because of Hemingway's union activity, we find that the September 17 warning was discriminatory.

On September 24, Hemingway was given another warning for failure to keep a ''good eye on her machine'' and for staying too long on her break—approximately 35 minutes. Hemingway refused to sign the warning because her supervisor was responsible for her machines while she was on break. The judge credited her testimony that other employees were on break for the same length of time, but that she was the only one warned. We find that Hemingway was disparately treated and, therefore, that the General Counsel has established a prima facie case of discrimination. We further find that the Respondent has not met its burden of proving that Hemingway would have been warned in the absence of her union activity.

Steven Smith was on the in-plant organizing committee and signed and solicited cards. He was Gena Hemingway's boyfriend.

On September 3, he was on break with Gena Hemingway and he was warned for overstaying his break in the same incident that she was discriminatorily warned. Based on his active and open support for the Union and his association with Gena Hemingway and the other circumstances of this case, including the strong evidence of antiunion animus and the judge's finding of general knowledge of union activity, we find that the Respondent had knowledge of Smith's union activity. We find that the September 3 warning was discriminatory for the reasons noted above concerning Hemingway's warning.

On September 27, Smith was warned for leaving the work floor without permission. Smith often painted posters for people. The judge credited his testimony that he received permission from Supervisors Edwards and Sam to clock out long enough to do a poster for someone. He did the poster in the canteen and Edwards signed him out. Smith was away from his job from 3:15 to 5 a.m.; he then worked until 8 a.m. Edwards gave him a warning anyway.

Because Smith was warned even after he received permission to clock out, we find that the General Counsel has established a strong prima facie case that the September 27 warning was really because of his union activity, and that the Respondent has not established that he would have been warned in the absence of his union activity.

On October 5, Smith was warned for placing the wrong side of production tickets on his production sheet. Smith protested that he was following the instructions he had been given. He was told that, if he did not sign the warning, he would not be paid. The alleged mistake involved 8 out of 50 tickets, and no product was improperly priced or marked. Later that same day, Smith was terminated for having too many warnings.

Based on all the circumstances, including the inconsequential nature of Smith's alleged infraction and the other unlawful warnings he received in September, we find that the General Counsel has established a prima facie case that the October 5 warning was discriminatory. We further find that the Respondent has not proven that he would have been warned in the absence of his union activity.

Chyrel Burroughs signed a union card and talked to various people in the canteen and on her breaks about the Union. Three or four people would participate in these conversations. She was told by Supervisor Suggs that he regarded her as a loyal and good worker, and that he had no trouble with her on the floor.

On September 19, she was given a written warning for ''taking names for other reasons than what her job required on the floor during working hours.'' Burroughs had solicited names for a towel club. However, Supervisor Suggs told Burroughs that Park thought that Burroughs was securing names for the Union. Park called Burroughs into his office and she explained what had occurred. Park replied that soliciting for the towel club was permissible so long as it was not when the employees were working. Although Burroughs thought the incident was concluded, Suggs presented her with a warning the next day, stating that he was acting on Park's instructions.

The record shows that the Respondent associated the towel club with union activity. As discussed above, just 2 days earlier, when employee Hemingway received an unlawful warning allegedly for ''taking names to start a towel club,'' the Respondent actually suspected her of taking names for the Union. Similarly, with respect to Burroughs, Park, who was responsible for the issuance of the warning, believed that she was really soliciting names for the Union. Accordingly, we find that the General Counsel established a prima facie case that Burroughs' September 19 warning was motivated by the Respondent's belief that she was engaging in union activity. We further find that the Respondent has not shown that Burroughs would have been warned in the absence of her suspected union activity.

Accordingly, we conclude that the eight written warnings given to Moody, Hemingway, Smith, and Burroughs, discussed above, all violated Section 8(a)(3) and (l) of the Act.

AMENDED CONCLUSIONS OF LAW

1. Respondent Kunja Knitting Mills U.S.A., Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Ladies' Garment Workers' Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by the following acts and conduct.

(a) Threatening employees that if the Union came in it would close and/or relocate its plant.

(b) Interrogating employees about their union sympathies and those of other employees and asking them which employees signed union cards or are involved with the Union.

(c) Soliciting employees to report on the union activities of other employees.

(d) Informing employees that they were terminated for their union activities.

(e) Representing to employees that if the Union came into the plant they would lose their jobs.

(f) Creating the impression that employees' union activities were under surveillance.

4. By disciplining and discharging Supervisor Lester Smith because he gave testimony at a Board proceeding, the Respondent has violated Section 8(a)(1) of the Act.

5. By disciplining and discharging Chyrel Burroughs, Michael Moody, Steven Anthony Smith, and Gena Hemingway, the Respondent has violated Section 8(a)(3) and (1) of the Act.

6. By discharging Margaret Gail Rogers because she gave testimony in a Board proceeding, the Respondent has violated Section 8(a)(4) and (1) of the Act.

AMENDED REMEDY

We shall order that the Respondent remove from its files any reference to the unlawful warnings and discharges of Chyrel Burroughs, Michael Moody, Steven

Anthony Smith, Gena Hemingway, Margaret Gail Rogers, and Lester Smith and notify them in writing that this has been done and that the discharges and warnings will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Kunja Knitting Mills U.S.A., Inc., Mullins, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that if the Union came in it would close and/or relocate its plant.

(b) Interrogating employees about their union sympathies and those of other employees and asking them which employees signed union cards or are involved with the Union.

(c) Soliciting employees to report on the union activities of other employees.

(d) Informing employees that they were terminated for their union activities.

(e) Representing to employees that if the Union came into the plant they would lose their jobs.

(f) Creating the impression that employees' union activities are under surveillance.

(g) Disciplining and discharging supervisors because they give testimony at a Board proceeding.

(h) Disciplining and discharging employees because of their union activities.

(i) Discharging employees because they give testimony at a Board proceeding.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Chyrel Burroughs, Michael Moody, Steven Anthony Smith, Gena Hemingway, Margaret Gail Rogers, and Lester Smith immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they may have previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful warnings and discharges, refrain from using these warnings or discharges or any related matters as a basis for future disciplinary action, and notify the employees in writing that this has been done and that the warnings and discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Mullins, South Carolina, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
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> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees that if the Union came in we would close and/or relocate the plant.

WE WILL NOT interrogate employees about their union sympathies and those of other employees and WE WILL NOT ask them which employees signed union cards or are involved with the Union.

WE WILL NOT solicit employees to report on the union activities of other employees.

WE WILL NOT inform employees that they were discharged for their union activities.

WE WILL NOT represent to employees that if the Union came into the plant the employees would lose their jobs.

WE WILL NOT create the impression that employees' union activities are under surveillance.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT discipline or discharge supervisors because they give testimony at a Board proceeding.

WE WILL NOT discipline or discharge employees because of their union activities.

WE WILL NOT discharge employees because they give testimony at a Board proceeding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Chyrel Burroughs, Michael Moody, Steven Anthony Smith, Gena Hemingway, Lester Smith, and Margaret Gail Rogers immediate and full reinstatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and

WE WILL make them whole for any loss of pay and other benefits which they may have suffered by reason of the discrimination against them, with interest.

WE WILL remove from our files any reference to their unlawful warnings and discharges, refrain from using those warnings or discharges or any related matters as a basis for future disciplinary action, and notify them in writing that his has been done and that the warnings and discharges will not be used against them in any way.

KUNJA KNITTING MILLS U.S.A., INC.

Paris Favors, Esq., for the General Counsel.
Richard J. Morgan, Esq. and *Margaret Bumgardner Dubose, Esq.*, of Columbia, South Carolina, for the Respondent in Cases 11–CA–13055 and 11–CA–13276.
Mark W. Buyck III, Esq. and *Reynolds Williams, Esq.*, of Florence, South Carolina, for the Respondent in Cases 11–CA–13364 and 11–CA–13458.
James R. Goldberg, Esq. and *James Haigler*, of Atlanta, Georgia, for the Union.

DECISION

STATEMENT OF THE CASE

Cases 11–CA–13055 and 11–CA–13276

LOWELL GOERLICH, Administrative Law Judge. The charge in Case 11–CA–13055 filed by the International Ladies' Garment Workers' Union, AFL–CIO (the Union) on November 14, 1988, was served on Kunja Knitting Mills U.S.A., Inc. (the Respondent) on November 15, 1988. An amended charge filed by the Union, in Case 11–CA–13055 on December 5, 1988, was served on the Respondent on December 5, 1988. The charge in Case 11–CA–13276 filed by the Union on April 12, 1989, was served on the Respondent on the same date. An order consolidating cases, consolidated complaint and notice of hearing was issued on May 10, 1989. In the complaint, among other things, it was alleged that the Respondent had engaged in the violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

The Respondent filed timely answers denying that it had committed the unfair labor practices alleged.

The matter came on for hearing at Mullins, South Carolina, on May 24–26 and June 29–30, 1989. Each party was afforded a full opportunity to be heard; to call, examine, and cross-examine witnesses; to argue orally on the record; to submit proposed findings of fact and conclusions of law; and to file briefs. All briefs have been carefully considered.

FINDINGS OF FACT,[1] CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF THE RESPONDENT

Respondent is now, and has been at all times material, a corporation licensed to do business in the State of South Carolina with a factory located in Mullins, South Carolina, where it is engaged in the manufacture and sale of sweaters.

During the past 12 months, which period is representative of all times material, Respondent received at its Mullins, South Carolina factory, goods and raw materials valued in excess of $50,000 directly from points outside the State of South Carolina.

During the past 12 months, which period is representative of all times material, Respondent shipped from its factory in Mullins, South Carolina, products valued in excess of $50,000 directly to points outside the State of South Carolina.

Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

First: According to Yong S. Park, general manager,[2] H. J. Ahn, a Korean, is the ''single owner'' of the Respondent. His office is in Seoul, Korea. He manages the plant by telephone and telefax. Park testified that ''[n]ot only [did he report the] union campaign, but everything that has been going on in the plant that [he] should report to him.'' Ahn controlled the Company completely and directed everything.

The plant is an entirely new installation from the ground up. It is presently populated by around 500 employees, some of whom are Korean technicians and other classifications. The Respondent's initial investment was $20 million. The Respondent moved into the building in the second week of January 1988 where it has since continued to knit sweaters, its only product.

[1] The facts found are based on the record as a whole and the observation of the witnesses. The credibility resolutions have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction of the findings, their testimonies have been discredited either as having been in conflict with the testimonies of credible witnesses or because the testimony was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

[2] Park was ''responsible for all over plant operations.'' He commenced work July 1, 1988.

Edward Albert Cone was employed by Ahn to organize the Company and to get the plant in production. From April 1987 until early January 1988, Cone, among other things, developed a business plan, identified and then negotiated with local community officials for a site location, worked with the South Carolina special schools to develop a training program, and planned for and supervised all aspects of the construction of the manufacturing facility. In Cone's words regarding the business and facility:

> We started in August and it had to be operating in January. We're talking about four or five months from a soy bean field to an operating factory.

Cone was vice president; he was the top U.S. manager.[3] Cone possessed excellent qualifications for the venture and even though he faced many difficulties (a major one was training employees) he set up the plant and put the plant into operation, producing sweaters. Nevertheless, Cone's efforts did not please Ahn. Ahn showed up in March 1988 and stayed 3 weeks. He was angry ''because the factory had not progressed as fast as he imagined it to.'' He directed Cone to fire some of the U.S. staff which he did, eliminating almost all the American managers. Cone testified ''It was [an] extremely difficult situation because at that point in time I had [a] Korean management team out there managing everything. Communications were difficult.''[4]

Ahn reminded Cone constantly that he would shut the plant down if it didn't operate profitably. By May 1988 according to Cone the plant was ''approaching [a] level on a monthly basis of profitability or break even,[5] but we'd lost a lot of money. About two million dollars up to that point.'' Cone testified that it appeared that Ahn ''was ready to close the plant at the drop of a hat.'' In the fall of 1988 Ahn told Cone that ''he was going to close the factory if we were late and we lost anymore money.'' Ahn even ''insinuated'' that he would fire Cone. Ahn was ''extremely angry.'' Cone had a ''tough job keeping lids on things.'' Cone finally left by ''mutual agreement'' in December 1988. In Cone's words:

> Let me be honest with you. I had a rough year and there were a lot of communications situations between Mr. Ahn and I that I didn't like. And, to be very frank with you, I had attracted that business and I felt a tremendous responsibility to Mr. Ahn, to the four hundred and fifty employees and to the state and county officials to make that business successful. I had a very rough time and I was operating under extremely difficult circumstances. And, I didn't appreciate, in all cases, Mr. Ahn's assessment of what I was doing and what was happening. It was a situation that I wasn't going to continue staying with——
>
> Mr. Ahn is a very business oriented, very critical individual. He has got very high standards and it's very difficult to meet those. Under the circumstances my, the relationship in July got to a point where I made a decision I wasn't going to continue it and I told him . . . . I didn't feel I wanted to stay involved with the Company.
>
> Mr. Ahn was critical to me and everybody. It wasn't as personal as that as it was a situation and through the course of July to December we were breaking the relationship down.
>
> In July it was a rough situation. I was afraid that if I left because I was involved in so many things and it was not organized to the point that I felt it would run properly. And, Mr. Ahn discussed that at some point in time when it was more stabilized and at the end of the year, like in December, with some of the things we had done, it was more stable. I felt comfortable leaving. I think Mr. Ahn felt comfortable that I could leave. It was chemistry.
>
> I can't say I would have been fired. I don't know. Possible.

Second: The Union held an organizational meeting at a local union hall on May 13, 1988, and commenced an organizational campaign. Annette Edwards, a technician assistant,[6] testified that James Haigler, a union representative, came to her home in August 1988 and asked her to think about joining the union. She responded that she was part of management.

Technician Wallace L. Brown, prior to November 1988, while a knitter, signed a union card.

Kevin Stafford Turberville, a technician, testified that in September 1988 he learned of the Union through ''speculation and rumor'' when he overheard employees talking about the Union during breaktime.

Park testified that he heard for the first time about the Union in late September 1988.[7]

Cone claimed he had no knowledge of the Union's attempted organizational campaign although he said he had hints of the Union as early as May, but actually learned of the union campaign when ''we got handbilled'' in November 1988. On cross-examination Cone testified that before the handbill distribution employees had asked whether they had to join the Union and one employee told him that ''somebody had visited their house.'' Occasionally an employee would say ''[T]he Union man went by my house last night.'' Such comments could have been as early as April or May 1988. In any event Cone called the employees together on May 10, 11, and 12, and among other things, ''gave them a general session on labor unions'' and the Company's attitude toward labor unions. He said, ''[W]e didn't want a Union and we didn't think it was necessary.'' ''[W]e'd do everything legally to keep the Union out.'' ''[T]hey didn't have to sign union cards.''

According to Cone, Ahn had made it clear even before he came into the United States that he didn't want a union. It was on the tip of Ahn's tongue that he would close the plant if the Union came in. Park was more explicit, he testified that he knew Ahn would close the plant ''if they came in.'' Wallace L. Brown, technician assistant, testified that Park had ''informed us that the owner had a bad experience with

[3] According to Cone, ''My job was to get it up and running efficiently and profitable with on time deliveries. I had a Korean counterpart, K. W. Kim, executive vice-president, Mr. Ahn put in, in December.''

[4] Park was hired ''to come in and help with the communications link between the Korean and the Americans.'' Park was fluent in the English and Korean languages. He was a graduate of Syracuse University and had been in the United States for 16 or 17 years. At the time Park was hired he was a reporter for the American Religious News Agency. He had had no prior industrial experience.

[5] Park testified that the break-even point was reached in March 1989.

[6] Technicians are conceded to be supervisors.

[7] Park testified, ''I don't even know what union is.''

the union. That he really didn't like unions'' and that it was ''a possibility'' ''that Ahn would close the plant if the union came in.''

Patricia Combs, a supervisor leadperson, testified that at a meeting of supervisors, supervisor leadpersons, team leaders, and technicians, Park told the group that ''the owner would shut the plant down if the union came in. He . . . asked us to go out and find out anything we could and tell him.'' The meeting occurred January 16, 1989. At a prior small supervisors' meeting the ''Friday before'' Park asked ''if any of us had ever been associated with the union, what it would take to get a union in . . . what could we do to keep the union out.''

Margaret Rogers,[8] a knitter, testified that Cone told a group of employees in the summer of 1988 ''the company didn't want a Union and if a Union came they would probably shut the plant.''

Sometime in August or September 1988, Rogers went to see Park about a problem with her production. Among other things, at this meeting, Park inquired, ''Have you heard anything about the Union?'' She replied, ''One of the guys came by my house and I spoke with him,'' after which Park asked her about what she thought about the Union. After her reply Park said, ''if anybody harasses you about the Union on the job feel free to come to me.'' Park further remarked, ''We don't want a union at Kunja. We don't need a Union.'' Park concluded, ''Well, if you ever hear anything about the Union you let me know?'' On another occasion Park asked Rogers whether she had heard anything, Rogers answered, ''Yes, the talk about Union is very strong in the plant.'' Park also asked whether she had signed a union card. Rogers answered she had not signed a union card. Park added ''unions are organizations that's [sic] just out to take people's money . . . and you don't want to get involved in that.''

Rogers testified that among other things she asked Cone why a ''lot of people are quitting'' and ''a lot of people'' are being fired for ''penny-anny things [sic].'' Cone responded, ''Well, Margaret . . . [W]e can't have people influencing other people.''

In February 1989 Park published in the Kunja USA News an answer to the rhetorical question ''Could we survive . . . . Yes, we can. But only when there is no[t] major internal or external factors *including a union* that hamper[s] our concentration on production.'' (G.C. Exh. 3, emphasis added.)

On January 25, 1989, Ahn sent a facsimile transmission to W. S. Lee and Park, which was distributed to managerial employee, a part of which read:

> 1. Union
>
> Glad to hear that they dropped their petition. Thanks so much for your hard effort. In fact, all the people at Kunja USA saved their jobs because the percentage of plant shut down was 100% had worse come to worst . . . . I agree with you that you should always be alerted.
>
> Many thanks again.

Gail Causey, who had been a lead supervisor for the Respondent, testified that at a meeting of team leaders and supervisors on January 16, 1989, Park said that ''if the Union came into the Kunja Company that it would be closed.'' Park also said that ''he would like for us to go out and find out what we could and report back to him. He promised us better benefits and more money.'' Park testified that he heard the ''Union is in town . . . he's trying to get employees to sign the card'' and that he heard ''Union cards were being passed out at the plant.''

Third: Chyrel Burroughs commenced working for the Respondent on December 4, 1987, as a knitting operator. She was trained for approximately 3 months at Mullins/Marion Vocational Center before she started working at the plant. She worked on the swing shift, ''[r]otating, first, second and third.''

Burroughs signed a union card in June 1988. She ''talked to various people about the union in the canteen and on [her] breaks.'' Three or four employees would participate in these conversations.

On September 8, 1988, Burroughs was given a written warning concerning absences. The warning was given to Burroughs even though she maintained that she had been excused by her supervisor to attend surgery on her daughter.

On September 19, 1988, Burroughs received a second warning. Edwin David Suggs, a technician, charged Burroughs with ''taking names for other reasons than what her job [required] (2nd warning will be a termination) on the floor during working hours.'' (G.C. Exh. 15.) Burroughs refused to accept the warning notice. Apparently ''taking names'' referred to a towel club list of employees' names. From this list a name of an employee was chosen. The chosen one received a towel from the other persons whose names appeared on the list.[9] Many employees including supervisors participated in the towel club. Burroughs had solicited names for the towel club. Suggs told Burroughs that Park thought that she was securing names for the Union although Suggs had told him that the list was not of union names. Suggs also told Burroughs that he told Park that she was ''a loyal and a good worked [sic], and that he didn't have any problems with [her] on the floor.'' Park called Burroughs into his office. Burroughs explained what had occurred. Park replied that as long as the towel club's activities occurred when employees were not working it was okay. Although Burroughs thought the incident was concluded, the next day Burroughs received a warning. Suggs, in presenting the warning to her, said, ''I've got to give you this warning . . . it's nothing that I can do about it. Mr. Park was making him give me this warning.'' Burroughs refused the warning. Later Suggs said to Burroughs ''I hope you're not made [sic] with me because it's not [my] fault.''

Suggs testified that Burroughs was away from her job 40 minutes obtaining towel club names whereupon he wrote the warning and gave it to Park. The warning made no reference to the 40-minute time lapse.

Burroughs received another warning on September 20, 1988. It involved material she ran that was allegedly too short. The warning notice, among other things, had written on it ''(Final warning) . . . . She must be careful to check

[8] My observation of Rogers was that she was an extremely credible witness.

[9] Suggs described the towel club: ''That's when operators get together and they all put their name in one pot and at the end of the week they would pick one name. The person [sic] name that was pulled would receive towels from everyone else.''

length and weight of panels, or she can be terminated.''[10] (G.C. Exh. 16.)

Burroughs maintained that the fault was in the way the machine was set and not in the operator. Burroughs testified that the warning offered in evidence was not shown to her. The warning discloses the statement ''Refused to Sign.'' According to Burroughs, Suggs showed her some short panels but these were not her panels because they did not have her ticket number on them.

According to Burroughs she spoke to Cone about her warning and Cone spoke to Suggs and ''told him to take away the warning and do away with it, and don't give me that warning.''

When Burroughs appeared again for work she heard a rumor that Park thought she was taking union names and that she was going to be discharged. This prompted her to visit Cone. Burroughs described the rumors she had heard and the warnings she had received. Among other things, Cone told her she didn't have any problems about being terminated and said, ''you're fine, so you can rest at ease.'' Burroughs commented ''if they was to fire me . . . . it would be like only union related, because they think I'm with the union.'' Thereafter Cone talked about the union, in Burroughs' testimony:

> And, he said well, I can understand how you feel, he said, because I wouldn't want to work with the pressure over my head. And, you know, it sort of like went on and he talked about the union, about if the union came into the plant, the plant would close down, and the disadvantages of a union, like how much money the union would take. Well, they did it like on a yearly basis. He like gave me like a rough big figure like think about what you could do with that money that you're paying for somebody else. And, he told me I wouldn't be able to come into his office and sit down and talk to him. My union representative would have to go and talk, you know, I wouldn't have that freedom. And, which he didn't say anything that was of an advantage. Everything he said was more or less to the disadvantage of the union.

After Burroughs' conversation with Cone, she was absent from work for 2 days. When she returned on September 23 Yon advised her that she was terminated. She asked why. Yon answered that he didn't know. Burroughs asked to speak to Park. Yon responded that Park was not there. Later Yon informed Burroughs that Park would speak with her but Burroughs declined. She had asked one of the employees to ask Cone to call her. Cone phoned and Burroughs related to him that she had been fired and that she would like to know the reason for the firing. Cone replied that neither had he known that she was fired nor the reason. He said he would ask Park and call her back. Cone called back and informed her that she had to be terminated because it was the policy of the Company to discharge after three warnings.

Cone remembered having conversations with Burroughs. She had complained about receiving a warning and that she ''didn't think her technician liked her.'' Cone told her that her warning appeared to be valid. Cone denied that he had conversed with Burroughs about labor unions. Burroughs testimony is credited.

Fourth: Michael Moody, a knitting machine operator, commenced work with the Respondent on February 2, 1988. He was discharged on October 3, 1989. His base pay was $4.50 with additional earnings if he exceeded production.

In June 1988 Moody joined the Union's efforts to organize the plant. He ''talked to some people and handed out some cards.'' He received the cards from Union Representative Haigler who visited his home on June 13, 1988. Moody ''signed on the committee list'' and became a member of the union ''in-plant'' committee. On breaktime Moody talked to at least two people about the Union.

On September 15, 1988, Moody's supervisor, Bill Wong (Ill Jeong Hwang), approached Moody and asked ''was [he] part of the Union.'' Moody answered, ''no.'' During the conversation, according to Moody, Wong said that ''before the company let a union come in, they would close down and relocate.'' Later Wong approached Moody with Technician Kevin Stafford Turberville and the same representation was repeated. Ill Jeong Hwang testified that he told Moody that ''if this company continues to suffer from losses, then eventually this company will closed [sic] and maybe relocated at other place.''[11]

On the same day, shortly after Hwang had approached Moody (September 15, 1988), he was given a warning. Although this was his sixth warning, he had never been told that he might be discharged. Moody returned to his machine for the purpose of cleaning it in preparation of ''knocking off.'' He had just returned from another employee from whom he had obtained an air hose to clean his machine. Turberville came up to him with an ''already written out warning.'' He told Moody the warning was for being out of his work area. Moody pointed to other employees and said, ''look at her, look at him, they out of their work area, why don't you write them up.'' These people did not get warnings. Moody refused to sign the warning because he was in his area ''getting equipment to clean [his] machines'' from which he was only about 10 feet away. Turberville did not advise Moody that he would be fired.

On the same day Moody conversed with Park in his office. Moody describes the conversation:

> He told me that the warnings don't mean nothing. I can get up to ten warnings and it wouldn't really make no difference as long as I come to work every day and perform well, and as long as I don't get caught for stealing or tearing up company property, or missing too many days or fighting, then I'd be terminated.
>
> . . . .
>
> He told me that they needed more black leaders.
>
> . . . .
>
> I told him that I shouldn't be given this warning because I have to walk around to get cleaning equipment to clean my machines and air hoses to blow off my machines, plus I have to walk around to get the yarn and

[10] Employees from time to time were required to check the materials running from the machines in order to verify the length.

[11] A question has been raised as to whether Hwang was familiar enough with the English language to have said ''before the company let a union come in they would close and relocate.'' However, it would appear if Hwang could have put in English the foregoing statement which he testified that he did, he certainly would have been able to put into English the ''close shop'' statement.

> stuff when I run out. So, I don't think I should have got that warning.
>
> . . . .
>
> He told me that, don't worry about it and go back to my machines.

Moody continued to work until October 3, 1988, when Moody was called into Park's office. Moody's files were on Park's desk—Park told Moody that he had too many warnings. Park said, ''Normally anything after three warnings you will be terminated and [he] should have been fired ever since July.'' Park called Hyon into the office and Park and Hyon conversed in Korean. Moody protested. Park ''bowed up'' at Moody and told him not to get upset. Then Hyon took Moody to the backroom and told him that if he didn't fire Moody they would fire him. Moody asked to talk to Cone. When Cone appeared (Moody was again in Park's office) he said that he knew what Moody was talking about but there was nothing he could do. Park sent Moody home. The same day Moody phoned Park and asked him whether he was fired. Park asked Moody to come to the plant at which time he told Moody he was fired.

On August 31, 1988, Moody had received a warning for ''fail[ing] to check yarn ply for app. 2 hrs'' (R. Exh. 17); on June 28, 1988, Moody received a warning for ''smoking in unauthorized area''; on May 25, 1988, Moody was given a warning ''for his bad attitude'' and overstaying break (R. Exh. 19); and on February 12, 1988, Moody received a warning ''about running 3 ply.'' (R. Exh. 21.)

Ill Jeong Hwang, a technician, testified that Moody was discharged ''due to the accumulation of the problems that he had in his performance. In particular, his laziness.'' Hwang testified that he addressed Moody a ''lazy man, lazy man.'' Wallace L. Brown, technician assistant, testified that Moody ''seemed to be a good employee.'' Technician Turberville testified ''at first [Moody] was a good operator'' but there came a time when ''he would walk around . . . constantly'' in late September ''[w]hen everybody was concerned about people walking around and talking.''

Hwang testified that employees did not need permission to ''move around to look for cleaning materials for their equipment.'' Turberville testified that other operators besides Moody were walking around but he had no authority over them. Annette Edwards, technician assistant, testified that employees sometimes would leave their lines to obtain cleaning material. Moody denied that he ''walked around a lot on the job.''

Moody testified ''anything over $4.50 you made production.'' His average wage was between $5 to $7 an hour. When he was discharged he was making $5.20 an hour. His highest production rate was $7.42 an hour. Three times he received a bonus of $25 for perfect attendance. Turberville testified that an operator that makes over $4.50 an hour is considered a good producer. Brown testified that if an employee averaged $5.67 an hour ''that's pretty good production.''

Brown testified that Moody asked him to attend a union meeting around August or September. Brown referred to Moody as ''the main one.''

Fifth: Steven Anthony Smith went on the Respondent's payroll February 2, 1988, as a knitting machine operator. In May 1988 Smith first talked to a union representative, James Haigler. Gena Hemingway was present. Smith signed a union card at the first formal union meeting on May 13, 1988, at the union hall in Mullins. Smith talked union to other employees on his breaktime and outside the plant and tried to get them to sign cards. He was a member of the in-plant organizing committee. He kept in contact with the union representative.

In April or early May, Smith received a warning that his production was low. Smith attributed it to the fact that the new machines were not operating properly. On September 3, 1988, Smith was warned for ''his over-stay at canteen.'' (G.C. Exh. 10.) Smith's response was that he was told by technicians that he could take two 20-minute breaks rather than the 10-, 20-, and 10-minute breaks. He had obtained permission from Han and Sam to take the 20-minute break. When Hyon gave Smith the warning Smith told Hyon that other operators had been in the canteen longer than he had. He named the operators' names. None received warnings. (If the Respondent's witnesses are considered credible, Smith had been a constant overstayer of breaktime for which he had not been warned.) Smith received another warning on September 27, 1988. Smith asked Edwards and Sam for permission for time off to make a poster rather than check out and go home. Permission was granted and Edwards signed him out for such purpose. Smith remained away from his job from 3:15 to approximately 5 a.m. He then worked until 8 a.m. Edwards gave him a written warning notice for the incident. Smith protested the warning notice, stating that he had received permission and did not expect to be paid for the time. (G.C. Exh. 11.)

On October 5, 1988, Smith received another warning. Smith was told to put a particular part of a ticket on a sheet. Hyon claimed that Smith had put the wrong tickets on the sheet. According to Smith, ''What they said I did was tore off the right side as opposed to the left side. And, see the rest of the ticket, you tie it onto your bundle and send it on.'' It involved ''eight out of fifty, sixty.'' The warning read, ''He sticked wrong tickets on production sheet.'' (G.C. Exh. 12.) Smith refused to sign the warning notice initially but he was told if he did not sign he wouldn't be paid for the tickets. Smith stated to Hyon that he did not merit the warning because he was following instructions. This incident occurred the first thing in the morning. At around 4 p.m. Hyon approached Smith and asked him to come with him. Smith followed Hyon. Hyon walked to the front door and then addressing Smith said, ''you're terminated.'' Smith asked why. Hyon replied that Smith would have to talk it over with Park. By Smith's alleged error no product of the Respondent was improperly marked or priced.

According to Smith in mid-September 1988 Smith and Hemingway visited Park in his office to ascertain why they were getting warnings which they thought were unmerited.[12] Park reviewed their files and said that ''the warnings were trivia[l] and minor and we had nothing to worry about.''

> Then he said that—he started talking about the union after he expressed that we didn't have to worry about being fired. He brought up the fact that he heard that we were involved with trying to initiate a union in the plant and he said if a union came into the plant, that

[12] The presence of Smith and Hemingway was in response to Park's open-door policy. Park testified, ''Anyone could come in any time.''

> he'd lose his job and we'd lose ours. He also said the plant would close down, said Mr. Ahn was a very wealthy man, he didn't use any banks to finance that plant, he paid cash for it, and that *he'd close it down at the first sight of a union coming in that plant*. And, then we were stunned, more or less, you know, for him to talk like that. And, he also asked us did we know of anybody else involved in the union and if we did, to let him know exactly who those people were because the company was running a strong campaign against the union, and they didn't want a union, and he gave us some anti-union propaganda or literature.[13] [Emphasis added.]

Smith's testimony was substantially corroborated by Hemingway.

After Smith was discharged he remained in the lobby waiting to see Park. Cone appeared and told Smith he would contact Park. Smith was then called into Park's office where Cone and Park were. Smith recalled that he had been told he would not lose his job because of the warnings and explained to Cone and Park ''about the warnings.'' Smith reminded them that other employees with three or more warnings were working. Smith named names. Park replied that the office personnel did not have enough time to review files, ''they would only fire people when they got a new warning'' at which time the person's file would be reviewed for prior warnings. The meeting ended by Park stating that he did not know what actually happened on the floor and that he would check with the technicians and phone Smith. Smith received no phone call, nor was he otherwise contacted.

On October 20, 1988, Smith talked to Technician Brown who had phoned him. According to Smith, among other things, Brown said it was ''bad'' that Smith was terminated and that ''he had talked to Mr. Park and he felt that the reason we [Smith and Moody] were terminated was because we were involved with the Union.'' ''[T]he word got back to Mr. Park that we were involved in the Union.'' On being told that Hemingway (who had been fired that night) was fired Brown commented that it was probably because she was involved with the Union. Brown asked how he could get back the union card he had signed prior to becoming a technician because he was ''scared'' that if the Respondent found out about it they would fire him.

Brown testified that he had engaged in a phone conversation and asked Smith to try to get his union card back. Smith agreed. Further Brown said that Smith had informed him that Hemingway had been discharged and ''he thought it was because of the union.'' Brown replied that he ''didn't know whether it was because of the union.'' Smith asked Brown ''to get his job back.'' Brown said that he would do the best [he] could.'' Brown testified that Smith had placed the phone call. Having carefully observed Smith's demeanor, I consider Smith to be a credible witness.

Park testified that the reason for Smith's discharge was ''the warnings.''[14]

Sixth: Gena Hemingway commenced working for the Respondent in the last week in January 1988 and went on the company payroll February 2, 1988, as a knitting machine operator. She ran four knitting machines and worked a swing shift—the first week, the first shift, the second week, the second shift; the third week, the third shift—8 hours a day.

Hemingway signed a union card the beginning of May 1988 at the union hall in Mullins. She talked about the Union during breaks and obtained the signature of the girl who rode to work with her. Hemingway talked to about 12 employees, describing for them the benefits of the Union. At the time she worked for the Respondent, Steven Smith and she were just friends, at the present time he is her boyfriend. Brown testified that Hemingway had tried to get him involved in the Union.

Hemingway received a warning on May 4, 1988, after an encounter with Production Manager Han for which he was required to apologize. The warning involved a stopped machine. Hemingway was waiting for a technician to change the machine for a different panel over which there was a communication misunderstanding.[15] Hemingway objected to the warning.

On September 3, 1988, Hemingway received a third warning. She was charged with being away from her job at break for a period of 21 minutes rather than 10 minutes. Hemingway refused to sign the warning notice asserting that she had permission from her technician to adjust her break periods. She also pointed out that the time on the notice was inaccurate.

Break periods were established 10 minutes in the morning, 20 minutes for lunch, and 10 minutes in the afternoon, however, the technician could adjust the periods which was done for Hemingway allowing her two 20-minute breaks.

On September 17, 1988, Hemingway was called to Park's office where she was told by Park that he had heard that she had been taking names to start a towel club. Hemingway answered that she did not know what a towel club was, and that the accusation was not true. Thereafter Hemingway returned to Park's office with her technician, Edwards, whom Park asked whether she had seen Hemingway taking names for the towel club. Edwards said she was the one who was taking names for the towel club, not Hemingway. Nevertheless, Edwards came to Hemingway and tried to get her ''to sign that warning for trying to start a tower [sic] club.''

Edwards testified that she had been a member of the towel club, that Park had called her into his office ''to give a warning for receiving names on the Towel Club.'' Edwards returned to Park; Park called Hemingway into his office. Edwards was also present for about 10 minutes. Hemingway denied that she had solicited names for the towel club. Edwards testified she told Park she had not seem Hemingway soliciting for towel club members.

According to Hemingway after she had refused to accept the warning she went again to Park's office and told Park,

[13] The antiunion propaganda was a communication to the employee in which Park wrote among other things ''We do not have a union in this plant, and we don't want one in this plant . . . we will use all legal means to keep the union out.'' (G.C. Exh. 8.) The communication also outlined reasons why employees should not sign union cards.

[14] Park downplayed his participation in the discharge of employees. He testified, ''I don't really have occasion to the reason why an individual terminated and actual work is done by supervisors and managers and what I do is there, I just finalize it and officialize.''

[15] The credited record reveals that there were some language difficulties between the Korean supervisors and the Americans.

''I told him well, she admitted she was the one taking names to start a towel club . . . I didn't have anything to do with [it] . . . he said, well, you are innocent until proven guilty . . . this will not go in your file.''

Later in the day Hemingway was again called into Park's office. Edwards was present. Park, addressing Edwards, asked her whether she had not said that ''Ms. Hemingway was taking names to get a union started, was involved with the Union.'' Edwards answered ''Yes'' and said employee Frances Martin gave her this information; ''we tried to get her to come to the office, but she refused.'' Edwards denied that the word ''union'' was used in the meeting. Edwards' denial is not credited. Edwards admitted that Hemingway's warning ''wasn't fair.''

Hemingway was warned again on September 24, 1988, according to the notice ''for not keeping a good eye on her machines'' (G.C. Exh. 7) and for ''staying over on break (4:35 to 5:10 a.m.)'' (35 minutes). Hemingway refused to sign the notice because she ''didn't feel like I should have taken the blame when my technician was responsible for watching the machine while I was on break.'' According to Hemingway while other employees were on break with her, for the same period of time, she was the only one Edwards picked out to whom a warning was given. Edwards testified that she did not know the exact time Hemingway left for break but she knew that she was over break ''[b]ecause everybody else was back and she wasn't.''

Around mid-September or the end of September Hemingway, concerned about the warnings, with Steven Smith went to see Park. According to Hemingway, Park had their files pulled and looked at their records and said that Hemingway's ''attendance was good and [her] production was good, and that [her] record was such that [she] wouldn't be fired.'' He said she was in ''good standing.'' He said that ''they fired people for . . . stealing or fighting on the job . . . stuff like that''; that my record was ''practically clean.''

Hemingway testified further:

> And, he also said that he had heard that Steven and I were involved with the union, and he said he had gotten it from a very reliable source, and he said that, as you—you may not be aware, but we're running strong campaign against the union and he gave me some anti-union information, and you know, he told us to let him know if we—give him the people's names if we know of anybody who was involved, and you know, we were stunned, so we shook our heads as if to say okay, you know.[16]
>
> Q. This anti-union information that he gave you, what did it say?
>
> A. Something about they were 100% against the union and you know, just saying why. And also, he said too while we were in there that if a union came in, that he would lose his job and we would lose our jobs too because the company would close and that the company—I mean that the man who owns the company has a lot of cash and doesn't have to pay any banks or anybody.

[16] See also Steven Smith's testimony, supra.

Park agreed that he had met with Smith and Hemingway and that they wanted to talk about warnings. A part of Park's testimony is as follows:

> They could come in any time and these two individuals just walked in and, then, they were—they want to talk about the warnings. They were worried about warnings they had. So, I asked him ''How many warnings do you have?'' and the one says three and the other one three—the other way around, I don't know, three or four. And, I asked him, again, what's the nature of that warnings and they are saying overstaying break time and bad panel. So, what I told them is compare it with other offenses such as stealing sweaters, break machines and insubordination, you offenses is minor than others. So, I told them ''Don't worry too much.'' They looked very worried. Said don't worry too much, just keep working. That's what I told them.
>
> I never told them your record is clean is [sic] anything. I did not have record with them at the time and, then, they left.
>
> . . . .
>
> What I said was employees—I also told other employees, too, whoever visit me . . . . Employees have a right to go against Union. That's your matter of choice and the Company is not supposed to influence any decision.

Park denied that he knew that Smith and Hemingway were involved with the Union although he had heard through his managers that the Union was involved in the plant. According to Park he was informed that ''[t]he Union is in town and he's trying to get employees to sign the card . . . [s]taying at Martin Motel'' and ''was going around to the employees' houses trying to get them to sign'' and that ''the Union cards were being passed out at the plant.''

Park also testified that he did not tell Hemingway and Smith ''the Company policy of three warnings and you would be fired.'' According to Park he did not look at their files prior to their discharge. Where Park's testimony differs from the testimony of Hemingway and Smith, I credit Smith and Hemingway.[17]

On October 18, 1988, when Hemingway was about to report for the midnight shift, she was met by Edwards and Jay who informed her that she had been terminated and that ''they had nothing to do with it'' and that she could speak with Park, who was still at the plant. Park was on the telephone so Hemingway made and appointment for the next day. She and Smith went to Park's office. Park and Giles Campbell were there. Smith's and Hemingway's files were pulled and their warnings were discussed. Hemingway testified as to what occurred at the meeting:

> I was shown four warnings, four warnings, and I told Mr. Park that I thought he had taken that out about the towel club. I told him that he said that he took it out because he said I was innocent until proven guilty.

[17] Park appeared to be a scared witness who tried earnestly to tailor his testimony to accommodate the Respondent's position. Many of his answers were superrogatory. Indeed after the Respondent's attorney had completed his examination, Park asked to ''mention just one thing before I leave.'' He then volunteered additional testimony concerning Smith, which if believed, would have enured to the benefit of the Respondent.

> And, also Giles Campbell claimed that he had taken that warning about my machine being stopped out of my file also. And, you know, it was still in there, both of them. And, you know, I told Mr. Park also that *I hadn't gotten warning—received a warning since the last time I had talked with him when he said that my records were practically clean, that I had nothing to worry about, and would not be fired. I told him that I hadn't gotten a warning since then or anything and he said that his attorney recommended that I be terminated*. [Emphasis added.]
>
> JUDGE GOERLICH: Did he tell you why you were being terminated?
>
> THE WITNESS: He said too many warnings, too many warnings, and that his attorney had recommended.

Hemingway received a letter dated March 30, 1988, from Cone congratulating her ''for achieving an efficiency in excess of 100% during the period of March 21, 1988 through March 27, 1988.'' (G.C. Exh. 9.) Included was the clause ''Your accomplishment reflects highly upon you.'' Her wage records show that she was a much overaverage employee.

In his testimony Cone referred to Hemingway as ''one of our first people to make production . . . and she's a nice clean-cut girl and I enjoyed talking to her.''

Park testified that Hemingway was terminated because of the number of her warnings. Park asserted that his only role in the Hemingway discharge was that he ''finalized'' it; he ''just'' signed the payroll action card for termination which was brought to him by Roseanna [Frozana], a personnel assistant, who said that this individual should be discharged. Park testified at the time of the discharges he did not know why either Hemingway or Smith was discharged. ''I didn't even remember the name, Gina Hemingway, Steve Smith until that comes a court case.'' Park also testified, ''I know she [Hemingway] got [a] warning, but I didn't know she got warning for towel club.'' But Park also testified, ''I'm given the warnings at the final stages and, then, I finalize'' after which the warning is placed in the file.

Edwards testified that ''it wasn't fair'' to give Hemingway a warning for the towel club.

Seventh: Regarding disciplinary action, the Respondent's policy dated June 1, 1988:

> 1. The following disciplinary actions are available for use by supervision:
>
> (a) *Verbal Reprimand*—Normally used for minor infractions of rules or conduct. Shall be recorded on Employee Warning Record and placed in the employee's personnel file.
>
> (b) *Written Reprimand*—Used for more serious infractions of rules or conduct or repetition of minor infractions. Shall be discussed with the employee and filed in Personnel File, together with employee's comments or response.
>
> (c) *Discharge*—Repetition of an offense for which an employee has received a written reprimand or written reprimands on different subjects or offenses within a twelve month period will subject employee to termination. *Management, in its sole discretion, reserves the right to determine the number of written reprimands an employee may receive in a twelve months period before being discharged*. Also available for major offenses. Discharge of an employee is a serious matter and should generally be used as the last resort after other reasonable attempts to correct the situations have been tried and failed. [Emphasis added.]
>
> 2. No other disciplinary actions are available. An employee cannot be ''sent home'' from work for a period of time as a disciplinary action.
>
> . . . .
>
> 4. Generally, receipt of a total of three (3) warnings for different violations or two (2) warnings for the same violation within a twelve month period, whether given under this policy or any other policy, will result in discharge. *Management reserves the right, in its sole discretion, to determine the number of reprimands during the twelve months period*. [Emphasis added.]

Park thus explained the rule to Frozana Thomas, personnel assistant:

Park's testimony:

> What I told her is that the management should start considering terminating employees who has more than three warnings and from the time an individual have three warnings or more, the three warnings would be considered. That individual could be considered being terminated from the time he or she has three warnings.

Frozana M. Thomas, personnel assistant, testified that the discharge policy was ''[i]f an employee receives 3 or more warnings, they are subject to termination.'' Thomas testified that when she found a file with three or more warnings she would take it to Park and he would ''initiate disciplinary action, looking toward termination.'' About the four alleged discriminatees, Thomas did not remember pulling their files or Park's asking for them. She did remember that Cone asked for Burroughs' file. She remembered two employees who were not fired, Wendel Graves and Ray Crawford, who had received three or more warnings. Graves subsequently was fired after nine warnings.

Turberville testified that an employee was discharged who received ''3 warnings in a 6-month period.''

Suggs testified that all warnings have the same weight. Cone testified:

> We basically had a system of if you had three warnings you couldn't work there anymore. And, we told that to the employees and as they would get warnings they would be told that, you know, if they were near the end, there's one more warning and they would be terminated. They would be told at the time they got that written warning.

Edwards testified that she never checks the number of warnings an employee has before giving a warning. Four employees were not discharged after receiving three warnings or more. One employee received four warnings; another, seven warnings; a third, eight warnings; and the fourth, four warnings.

Eighth: Employees were required to clean their machines before they secured each day. An air hose was used in the process. According to Smith there were not enough air hoses

for all employees, thus sometimes the employee would leave his area to obtain a hose. No permission was required when an employee sought a hose. Hemingway also testified that sometimes it was necessary for employees to look for air hoses to clean their machines.

Ninth: Breaks were allowed in 10-, 20-, and 10-minute segments. Cone testified that an employee must take a normal break unless a technician authorized otherwise. Brown also testified that the normal break must be taken ''[u]nless they got with a technician or supervisor and discussed it.'' He further testified, ''They were abusing the breaktime, quite frequently.'' According to Rogers many of the technicians did not keep good tab when the employers took their breaks. The credited record reveals that on occasion technicians adjusted employees' breaks. The Respondent had a rule, ''According to the situation on floor, this break time schedule can be adjusted by technician.'' (R. Exh. 3.)

IV. CONCLUSIONS AND REASONS THEREFOR

A. *The 8(a)(1) Violations*

The Respondent violated Section 8(a)(1) of the Act.

(1) By the threats made by agents of the Respondent that it would close its plant if the Union came in.[18]

(2) By Park's solicitation of employees to report on other employees' union activities.[19]

(3) By interrogations of employees by the Respondent's agents regarding whether they had heard anything about the Union, what they thought about the Union, if an employee was a part of the Union, who was supporting the Union, and whether employees signed a union card.[20]

(4) By Park's solicitation of Rogers to report anything she heard about the Union.

(5) By Park's representation to Hemingway and Smith that if the Union came in the plant, they would lose their jobs.

B. *The 8(a)(3) Violations*

In *Wright Line*, 251 NLRB 1083 (1980), the Board established that if the General Counsel makes a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision to discharge, the burden shifts to the employer to demonstrate that the discharge would have taken place even in the absence of protected conduct.

In the instant case the General Counsel has supported his prima facie case by offering the following credible evidence:

(1) Employer antiunion animus was of such potency that it would have foregone an investment of more than $20 million to escape union organization.

(2) The employer engaged in diverse unfair labor practices which tended to discourage employees' union affection, some of which personally affected the dischargees.

(3) All four dischargees were active known union partisans. Park thought Burroughs was securing names for the Union; Moody was asked whether he was part of the Union; Brown referred to Moody as ''the main one''; Park told Smith and Hemingway that they were ''involved with trying to initiate a union in the plant''; Smith was on the in-plant organization committee and in contact with the union representative; Hemingway and Smith were friends.

(4) All four dischargees were discharged within a period of less than 25 days (September 20 and October 3, 5, and 11) during which period the union organizational campaign was proceeding toward an election, and the Respondent was conducting a ''strong'' campaign against the Union. Moreover, the discharges occurred at time when the discharges would have had a maximum deleterious effect on union affection.

(5) The four alleged discriminatees were discharged even though they were better than average employees and even though, because of a large turnover of employees, the Respondent apparently needed their services.[21] Suggs described Burroughs as a loyal and good worker; Moody made over production, and was considered a good producer. Three times he had received a bonus for perfect attendance; Park told Smith he had ''nothing to worry about.'' Cone described Hemingway's production and attendance as good; Hemingway had achieved an efficiency ''in excess of 100%.'' (G.C. Exh. 9.) Hemingway was a much overaverage employee and was referred to by Cone as a ''nice clean-cut girl.''

(6) Some of the warnings on which the discharges were alleged to have been predicated appeared not to have been well taken and were for infractions for which other employees were not warned.

(7) Employees who had received a greater number of warnings than any of the alleged discriminatees were not fired.

(8) None of the dischargees were ever told that they would be discharged after their third warning.

(9) All discriminatees were discharged shortly after they became known union partisans.

The Respondent counters the General Counsel's prima facie case by asserting that the real reason the discriminatees were discharged was because they ran afoul of the rule,[22] mentioned above.

The application of the rule is somewhat ambiguous since it reserves ''sole discretion'' to the management and apparently was not well defined. Park apparently attempted to clarify the rule when he advised Smith and Hemingway, ''they fired people for . . . stealing or fighting on the job . . . stuff like that.'' In evaluating the warnings of Hemingway and Smith, Park testified, ''compare it with other offenses such as stealing sweaters, break machines and insubordination, you[r] offenses is minor than others.'' It was these ''minor'' offenses for which Hemingway and Smith and the others were fired which normally they would not have been even though they had committed three infractions. Such conclusion is borne out by the fact that other employees were not discharged for committing three offenses; nor is there any credible evidence that since the discharge of the discriminatees any employee has been discharged for receiving three warnings. Indeed Burroughs and Moody were not discharged until after they had received six warnings.[23] Thus

[18] *Hendrix Mfg. Co. v. NLRB*, 321 F.2d 100 (5th Cir. 1963).

[19] *St. Mary's Home*, 258 NLRB 1024, 1028 (1981).

[20] See *Rossmore House*, 269 NLRB 1176 (1984).

[21] Cone testified that 1200 to 1500 employees passed through the gates in the first year.

[22] Regarding Burroughs, the Respondent expressed it this way in its brief: ''She had too many warnings and was terminated pursuant to company policy.''

[23] The Respondent claims that the lax adaptation of the rule occurred because the personnel assistant, Thomas, who allegedly was charged with the duty of calling to Park's attention when an employee had received his third

Continued

it seems obvious that the alleged three-warning rule was seized on by Park to afford a rationale for the alleged discriminatees' discharges. The sockdolager is found in Park's own testimony. Park testified:

> I asked him [Smith] ''How many warnings do you have?'' and the one says three and the other one three—the other way around, I don't know, three or four . . . . ''Don't worry too much.'' ''They looked very worried . . . just keep working.''

From this testimony it is crystal clear that at this time there must have been no three-warning discharge rule in effect for had there been, a reasonable person would have told Smith and Hemingway that their jobs were in jeopardy or on finding that they had three or four warnings they would have been fired on the spot. The conclusion is inescapable that the Respondent's real motive for discharging the alleged discriminatees was discriminatory.[24] The credible evidence in this case sustains the General Counsel's complaint regarding the 8(a)(3) discharges by a preponderance of the credible evidence. I am convinced that the discriminatees would not have been discharged if they had not engaged in protected union activities. *Wright Line*, supra.

I find that by discharging Chyrel Burroughs on September 20, 1988; Michael Moody on October 3, 1988; Steven Anthony Smith on October 5, 1988; and Gena Hemingway on October 11, 1988, the Respondent violated Section 8(a)(1) and (3) of the Act.

1. Case 11–CA–13364

The charge in Case 11–CA–13364 filed by the Union was served on the Respondent on June 13, 1989. A complaint and notice of hearing was served on July 20, 1989. Among other things the complaint alleges that the Respondent issued written warnings to Lester Smith and discharged him on June 6, 1989, because he cooperated with the Board and gave an affidavit and testimony in a proceeding in violation of Section 8(a)(1) and (4) of the Act.

The Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged but admitted that Lester Smith was terminated on June 6, 1989.

On August 7, 1989, this case was consolidated with Cases 11–CA–13055, 11–CA–13276, and 11–CA–13364 which appear in this caption. This case together with Case 11–CA–13458 (infra) was heard in Mullins, South Carolina, on December 4–6, 1989.

Each party was afforded full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.[25]

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT AND CONCLUSIONS THEREFOR

Lester Smith, a technician supervisor, testified adversely to the Respondent's position and for the General Counsel in these proceedings on May 26, 1989. Four days later on May 30, 1989, he was given two warnings and on June 6, 1989, he was discharged.

Smith had been hired around June 1988. He completed a training program and became a supervisor in the knitting department around March 1989. Three or four knitting operators were under his supervision, including Patricia Diane Combs (Nichols) who testified that he was a good supervisor.

Smith described his responsibilities as a technician as follows:

> Troubleshooting, machines, setting up machines, and quality control . . . . I would spot check and make sure that measurements and weights were being taken, proper tickets were used on the panels, I mean on the bundles and basically to keep the machines functioning as they should.[26]

Despite Smith's duties, it was the operators' initial responsibility to correct any problems that developed with the knitting machines. Moreover, it was the operators' job to check for the accurate measurement and weight of the product. In addition to the work of the operators, the Respondent had a quality control department that checked the lengths and measurements of the garments after they were completed.

Smith was previously terminated in April 1989 because he supposedly neglected to call in that he was not reporting for work. He produced a doctor's excuse and was reinstated within a week's time. Park explained the reason for the reinstatement:

> We spend time—we invested time and money for training technician assistant. So we try to be more careful of taking action against an employee like technician assistant. So, I know he was wrong and he was supposed to call in before he was out for three days with no call in. But I decided to give him one more chance.

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warning, was overburdened and was unable to make the reference. However, Thomas does not remember ever pulling the files of the alleged discriminatees or Park asking for them.

[24] ''[T]he 'real motive' of the employer in an alleged § 8(a)(3) violation is decisive.'' *NLRB v. Brown Food Store*, 380 U.S. 278, 287 (1965). ''It is the 'true purpose' or 'real motive' in hiring or firing that constitutes the test.'' *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 675 (1961). ''Section 8(a)(3) prohibits discrimination in regard to tenure or other conditions of employment to discourage union membership . . . . It has long been established that a finding of violation under this section will normally turn on the employer's motivation.'' *American Ship Building Co. v. NLRB*, 380 U.S. 300, 311 (1965).

''Illegal motive has been held supported by a combination of factors, such as 'coincidence in union activity and discharge' . . . . 'general bias or hostility toward the union' . . . . variance from the employer's 'normal employment routine' . . . and an implausible explanation by the employer of its action.'' *McGraw-Edison Co. v. NLRB*, 419 F.2d 67, 75 (8th Cir. 1969). All these factors are present in the instant case.

[25] The McNair law firm of which Michael J. Morgan, Esq., is a member withdrew as counsel for the Respondent at the conclusion of Cases 11–CA–13055, 11–CA–13276, and 11–CA–13364. Representation of the Respondent was taken over by the Wilcox law firm by Mark Buyck III, Esq., and Reynolds Williams, Esq. Respondent's brief in Cases 11–CA–13055, 11–CA–13276, and 11–CA–13364 was submitted by the McNair law firm. Respondent's briefs in the remaining consolidated cases were submitted by the Wilcox law firm.

[26] Combs, an employee who worked under Smith's supervision, described his duties as follows:

> [H]e supposedly keep my machines and stuff running, you know, like when I don't know how to do something, he know how to do it for me. Like when I don't know how to change a certain stitch he does it.

On June 6, 1989, Smith was given a written notice and terminated. The notice read as follows:

> Nature of warning: DeKnits,[27] threat to security guard, tardiness, absenteeism, Lester Smith has been given several warnings concerning the above. Operators that are following his shift are complaining about deknits, that are being left (written complaint from operators) . . . . He has been terminated. (G.C. Exh. 59.)[28]

According to Park, he made the final decision for Smith's discharge. Park related his reason:

> I decided to terminate Lester Smith based on the accumulation of everything, including warnings and absenteeism, and the fact that I gave him one more—one chance. And then he did that again, with bad panels. So, I decided to terminate him.

Warnings and Cited Reasons for Discharge

Tardiness: On May 30, 1989, 4 days after he testified Smith was warned for being tardy 1 hour, on May 29, 1989. Smith replied in writing on the warning slip that he was tardy one-half hour because he had ''car trouble.'' He refused to sign the warning slip. Smith had reported to the security guard that he would be late. Smith's timecard was not offered into evidence to verify the time at which he clocked in. Although Technician Suggs had been late on occasion (as had Smith) he had never received a warning.

Failure to Check Knitting Panels (Deknit Incident): On May 30, 1989, Smith was also given a warning for alleged failure to check knitting panels. Smith rejected the warning and wrote, ''The panels mentioned above were not run on my shift. The shift before me had two new operators running 6 m/c each and they did not know how to make measurement checks. I was told this by Kenny Findel (tech).'' (G.C. Exh. 57.)

This warning was given to Smith by Samuel Hyon, knitting department manager, at the same time the tardiness warning was given to him.

Patricia Diane Combs (Nichols), a knitting machine operator, who worked under Smith's supervision had no complaints about his supervision. On June 8, 1989, she was given a warning that on May 30, 1989, she had three bundles with the incorrect length.[29] She replied in writing that it was only two bundles ''and all of them was not short or too long.'' (G.C. Exh. 63.) According to Combs, all the pieces were not run by her. ''They were the trainees mostly, was these bundles and I came in behind them and ran the rest of them. All of those weren't mine.''[30] According to Combs, when she arrived at her job there were defective bundles behind the machines. Technician Turberville told her the bundles were good. She measured them and found some too short and some too long. She brought this to the attention of Smith and he told her not to use them. Smith put them in the deknit box. Combs testified that it was not unusual to find defective panels when she arrived at her machine. Combs testified that both she and Smith checked the bundles every hour.

Although Combs had produced defective panels before, this was her first warning. She testified that the plant produced ''a whole bunch'' of defective panels every day.[31]

Edwin David Suggs, a technician assistant, testified that after he showed his supervisor, Kim Young Wu, who oversees production, two of Combs' defective bundles (allegedly the same bundles as above described), his supervisor asked him ''would me and my operator [who was also present] write a letter of how we felt Lester Smith was doing his job.'' The letter written by Joan D. Shirley and signed by Shirley and Suggs was offered into evidence by the Respondent. The letter was not complimentary of Smith's conduct and read, ''This all started four weeks ago.''[32] (R. Exh. 34.) Suggs testified that it had been going on for a ''long time.''

Suggs further testified that an operator averages around eight defective pieces a day. ''. . . if you run say twenty (20), fronts (20) backs . . . we just give warnings.''

Suggs further testified that it was the ''talk of the plant'' that Smith had testified and had been on television.[33] ''Us technicians were talking together and we knew that he was about to be terminated because he wasn't doing his job.''[34] According to Smith, no supervisors had complained about his work. Ellis Derry Floyd, a security guard, included in his March 21, 1989 report the comment that he had ''had trouble with Lester Smith.'' (R. Exh. 35.) The trouble was Smith's refusal to punch in and out at lunchtime. Floyd insisted that the policy required technicians to punch in and out if they went through the gate at lunchtime. After the incident, according to Floyd, Smith, ''still wanted to give [him] a hard time about clocking in and out.'' Floyd reported Smith's conduct to his supervisor who told Smith to clock in and out. Smith said he didn't understand the policy and wanted to talk it over with Floyd. Floyd testified ''. . . when they went outside, I went to lock the door. And then he mentioned for me to come outside.'' Floyd declined. Then, ''he said a few things and then he says, 'See you up town.''' Floyd replied, ''Yes, sir, you probably will. I'll be up town.'' Floyd reported the incident to Park and Smith's supervisor, Giles Campbell. No further incidents occurred. Thereafter Smith clocked in and out. At the time the incident occurred Smith was not familiar with the procedure. He thought he was to clock in at the end of his luncheon break. This incident occurred before Smith's first discharge.

Absenteeism: Smith's personnel record reveals:

Left early	1–27
Late	1-27
Late	1–31
Late	2–3

[27] Deknits were defective sweater parts produced by knitters.

[28] In its brief Respondent asserts that Smith was terminated because ''he was not a qualified supervisory employee.'' (R. Br. 7.)

[29] Although it is not entirely clear, these apparently are the same bundles referred to in Smith's testimony.

[30] Combs' testimony appears to support Smith's explanation on his morning shift that the defective material originated on a prior shift.

[31] In weighing the credibility of Combs, I have considered that she is presently in the employment of the Respondent.

[32] If Smith was as incompetent as depicted in the letter, it is incomprehensible that he would have remained in the employment of the Respondent as long as he did. I believe that the letter was in most part a fabrication as was Suggs' testimony. Shirley was known as a complainer. She was not called for testimony.

[33] Smith had been interviewed by a local television reporter at the time of the hearing.

[34] If Suggs is to be believed, the Respondent was planning to terminate Smith even before he committed the last infraction which triggered his discharge.

Left early	2–11
Absent	4–4 (n.c.)
Absent	5–13
Absent	4–5 (n.c.)
Absent	4–5 (n.c.)
Terminated 6/7/89	[G.C. Exh. 66.]

Except for his excused absence which resulted in his first termination, he was absent 1 day. A further note in his personnel record reveals:

> Lester Smith was terminated on 4–6–89 for being absent 3 days with no call in. Smith came in 4–7–89 and talked to Mr. Park and Park agreed to reinstate him. Smith then returned to work on 4–8–89.[35]

Park testified that he discussed the decision to discharge Smith with ''knitting manager [Samuel Hyon] and floor manager [Yong Kim],'' and with ''Personnel Assistant, Barbara Lee and Frozana [Thomas].'' He did not discuss the matter with Smith. Park also testified that he was familiar with the letter of Suggs and Shirley and the report of Floyd. The floor manager reported to him the deknit information. Regarding the deknit situation Park testified:

> At the time the plant was making effort very hard to minimize the number of bad panels in the knitting room. The bad panels—*a percentage of bad panels knitted in the knitting room at that time was more than 40 percent of them. Which is unusually high*. Which doesn't make any since [sic], so we were contacting Oshima, Japan. Does the machine have problems in bursts, or what is it? We have too many defective panels here right now. [Emphasis added.]

Regarding Smith's discharge Park testified, ''. . . what I remember is, he has many warnings. He should have been gone long time ago. And then, the *last time*, what he did, was he was absent—he was laying out for three days without calling in.''[36] (Emphasis added.)

Park further testified (referring to the number of warnings a technician could receive before he was discharged):

> We don't have a pre-established policy on that, Your Honor, but we try to be more lenient on the supervisors—I mean, the technicians—because we invested time and money for them.

Park further testified that he attributed the deknits which appeared in a photograph offered in evidence to Smith. (These were allegedly the same deknits referred to in Smith's May 30, 1989 warning.)[37]

Although Park testified that he read the solicited statement of Shirley and Suggs he did not verify whether the facts were true or false nor did he give Smith a chance to respond.[38]

Conclusions

The record, as noted above, is replete with evidence of the Respondent's antiunion animus,[39] of its commission of unfair labor practices, and its determination to bar the Union from its plant. Its discharge of Smith and Rogers (see infra) is a further manifestation of such endeavor. It is fortified by the fact that the Respondent discharged the only two employee witnesses who appeared for the General Counsel and who were still employed by the Respondent at the time of the initial hearing in this case. Smith was fired just 10 days after he had testified[40] in this case. Such circumstances teach a lesson which the dullest employee would not fail to comprehend. Indeed the natural and foreseeable consequence of the Respondent's action was to deter and dissuade employees from testifying adversely against the Respondent and for the General Counsel in a Board proceeding and to discourage union activity. Such employer conduct is inherently destructive of employees' rights guaranteed by Section 8(a)(1) and (4) of the Act, the consequence of which the Respondent must have intended. Cf. *NLRB v. Erie Resistor*, 373 U.S. 221, 227–228 (1963). See also *NLRB v. Great Dane Trailers*, 388 U.S. 26, 34 (1967). Under these circumstances an unfair labor practice may be found, even if the employer offers evidence that his conduct was motivated by business consideration.[41]

It is also significant in evaluating the Respondent's motive that at the time it discharged Smith, according to Park, ''a percentage of bad panels knitted in the knitting room . . . was more than 40 percent.'' If this was true other employees working under other technicians must have been producing

[35] Smith furnished a ''medical excuse from [his] doctor.''

[36] Smith was given four written warnings which he had received during the period he was a technician. The final discharge warning was a summary of these warnings: two of the warnings occurred before the time he was discharged, the first time. His only warning for absenteeism was in April, which apparently was erased because he was restored to work. Thus Park's testimony does not conform to the credited facts. Although Park's testimony would suggest that what caused the final discharge warning was absenteeism, the fact is that the credited record contains no credible explanations as to why June 6, 1989, was chosen for the date to discharge Smith rather than May 30, 1989, the date of his last warning.

[37] The photograph of deknits offered in evidence was taken on June 9, 1989, 9 days later, raising a question whether they were the same deknits referred to in the warning. They were never shown to Smith.

[38] According to Smith, whom I credit, he received his discharge notice from Giles Campbell; up to that time, no one had discussed anything with him about his job performance. On the day of his discharge, Smith and Campbell went to the office where they met Hyon and Park. Smith asked Park about the warnings. Smith reminded Park that he had told him ''that they were lenient towards that [technician's warnings] because technicians weren't fired because of warnings.'' Parks replied that Smith had ''misunderstood what he'd said because what he said was, they try to work with technicians who get warnings.'' Smith asked to see his timeclock sheet and the warnings. Park replied that it was ''against company policy for him to do that.'' Smith was escorted from the plant at Park's request. Park testified that he did not give Smith a chance to explain the deknits, ''[b]ecause I gave him once [sic] chance already.'' No other technician had been discharged before Smith's discharge.

[39] In the case of *Sahara Vegas Corp*., 297 NLRB 726 (1990), the Board said in an 8(a)(1) case, ''Finally, in regard to the Respondent's animus towards the Charging Parties, the judge properly relied on the Respondent's antiunion history and general bias as reflected in the prior case!''

[40] Cf. *Bill Fox Chevrolet*, 270 NLRB 568, 573 (1984). The timing of a discharge may give rise to an inference of unlawful intent.

[41] The Board has said in *Texaco, Inc*., 285 NLRB 241, 246 (1987): ''under *Great Dane*, even if the employer proves business justification, the Board may nevertheless find that the employer has committed an unfair labor practice if the conduct is demonstrated to be 'inherently destructive' of important employee rights or motivated by antiunion intent.'' Suggs in his testimony, revealed that he and other technicians thought that it would be believed that Technician Smith was discharged because he gave testimony.

deknits. Thus, it is clear that Smith must have been singled out by the Respondent as the one technician to be disciplined. Such discipline following on the heels of Smith's adverse testimony surely was discriminatory. Moreover, up to the time Smith testified, the Respondent had not considered Smith to be an unsatisfactory employee. Indeed he must have been considered a promising employee because he was chosen for technician training and was returned to employment after his first discharge. Considering Smith's training, it is not credibly explained in the record why he, whose shortcomings were apparently typical of technicians, should be chosen for discharge when the Respondent had a ''preestablished policy . . . to be more lenient on . . . technicians'' and tried to be ''more careful of taking action against an employee like technician assistant.''[42]

The Respondent does not appear to have been ''more careful of taking action'' in Smith's case for, before Park fired him, Park did not give Smith a chance to respond to the charges against him even though Smith in his answer to the warning had written that the defective panels were not run on his shift and had cited Kenny Findel, a technician, as a source of this information.[43] Although the Respondent solicited a statement from employee Shirley, the record is barren of any evidence that the Respondent attempted to contact Findel. Indeed it is unclear in the credible record whether the deknits which figured in his discharge were actually attributable to Smith.

The sockdolager appears in the testimony of Suggs who testified after Smith had appeared as a General Counsel witness the ''technicians were talking together and we knew that he [Smith] was about to be terminated, because he wasn't doing his job.'' Indeed they even knew the pretextious reason the Respondent was going to use.

Because of the foregoing, I conclude that the reasons advanced by the Respondent for the discharge of Smith were pretextious.[44] I am convinced and find that Smith would not have been discharged had he not testified for the General Counsel in these proceedings. Cf. *Wright Line*, supra.

By discharging Smith on June 6, 1989, the Respondent violated Section 8(a)(1) and (4) of the Act. See *Parker-Robb Chevrolet*, 262 NLRB 402 (1982). See also *Kessill Food Markets*, 287 NLRB 851 (1987).

It having been found that the discharge of Smith was in violation of Section 8(a)(1) and (4) of the Act, in that the warnings given Smith on May 30, 1989, were utilized to support the unlawful discharge of Smith and were pretextual. I find that the warnings were also in violation of Section 8(a)(1) and (4) of the Act.

Disparate treatment is obvious. Although other employees were tardy, Smith was singled out as the technician to receive a warning; although there must have been other technicians whose employees produced deknits, because at the time the plant was running 40 percent deknits, Smith was singled out as the technician to receive the warning. As for absenteeism, Smith was not guilty; as for the guard threat, that warning had grown stale and the alleged misconduct was not repeated.

[42] With this policy in effect it seems incongruous that the Respondent would only warn operator Combs but fire Smith.

[43] The court observed in *United States Rubber Co. v. NLRB*, 384 F.2d 660, 662–663 (5th Cir. 1967): ''Perhaps most damning is the fact that both [employees] were summarily discharged . . . without being given any opportunity to explain or give their versions of the incidents.'' See also *Metal Cutting Tools*, 191 NLRB 536, 542–543 (1971); *Postal Services*, 275 NLRB 510 (1985).

[44] See *Limestone Apparel Corp.*, 255 NLRB 722 (1981). ''[A] finding of pretext necessarily means that the reasons advanced by the [Respondent] either did not exist or were not in fact relied on, thereby leaving intact the inference of wrongful motive established by the General Counsel.''

2. Case 11–CA–13458

The charge in Case 11–CA–13458 was filed by the Union on August 11, 1989, and was served on the Respondent on August 11, 1989. A complaint and notice of hearing was issued on September 27, 1989. Among other things the complaint alleges that Margaret Gail Rogers was discharged on July 20, 1989, because she cooperated with the Board by giving an affidavit and testimony in a Board proceeding in violation of Section 8(a)(1) and (4) of the Act.

The Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

On August 7, 1989, this case was consolidated with Cases 11–CA–13055, 11–CA–13276, and 11–CA–13364 which appear in this caption. This case together with Case 11–CA–13364 was heard in Mullins, South Carolina, on December 4–6, 1989.

Each party was afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

Thereafter, on January 26, 1990, the General Counsel filed counsel for the General Counsel's amendment to motion to reopen record and to amend complaint and set hearing date. Among other things the amendment alleged that Rogers, having been returned to work on September 19, 1989, was again unlawfully discharged on November 27, 1989. The motion was granted on February 12, 1990, and the amendment was allowed. Hearing was set for March 12, 1990, on which date the hearing was held in Mullins, South Carolina.

All parties were afforded full opportunity to be heard, to call, examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

a. *Discharge of Margaret Gail Rogers on July 20, 1989*

Margaret Gail Rogers testified in these proceedings on May 25, 1989. At the time she was on maternity leave which had commenced on March 3, 1989. A son was born to her on May 19, 1989.

Rogers was a knitting machine operator; she was well trained and held a record as a good employee. Park had offered her a supervisory job. When Rogers returned from maternity leave on July 20, 1989, the Respondent withheld employment until September 19, 1989. After she was returned to work, Rogers was again discharged on November 27, 1989. The General Counsel claims that the Respondent's failure to return Rogers to work on July 20, 1989, and her discharge on November 29, 1989, was because she had appeared as a witness in these proceedings.

Usually pregnancy leave lasted from 4 to 6 weeks which for Rogers extended to June 30, 1989. However, the doctor did not release her to return to work until July 20, 1989.

Rogers experienced complications with her pregnancy. She testified, ''a few weeks after I had the baby, I began internal hemorrhaging myself. That was what led to the hysterectomy later down the line.''[45]

Around the last part of May Rogers visited the plant with her baby. Thomas inquired of Rogers when she was returning to work. Rogers testified:

> I said, ''I don't know. My next appointment with the doctor is July 20th.'' I said, ''he will release me then,'' because I had to have a cesarian [sic] and I was hemorrhaging before the baby was born, and I was having problems. I said, ''as soon as he releases me again, I'll be back and that will be around the 20th or whatever he tells me then, I'll let you know.'' She said, ''well, let me know exactly—whatever when the doctor tells you, you let me know.''[46]

Park also saw the baby.

According to Thomas the Respondent required a statement from the doctor that a person on maternity leave is ''fit and capable'' of going back to work. Thomas testified that although she knew Rogers was on maternity leave and wanted to return to work on July 1, 1989, she did not phone her after July 1, 1989, to inquire about her condition even though she had called and had been calling another employee, Leslie Bowens, who had overstayed her maternity leave to inquire whether she intended to return to work. Thomas knew Rogers wanted to return to work. Work would have been available for Rogers on July 20, 1989, when she reported for work. Other persons were phoned by Thomas and were hired. None were experienced knitting operators as was Rogers.

Between the time Rogers appeared at the plant with her baby on July 20, 1989, Rogers visited the plant several times concerning her insurance premium payments. On June 19 or 20, 1989, Rogers talked to Wanda Bowman, insurance representative trainee; Tammy Jones, payroll clerk; and Thomas and Bobbie Lee, assistant personnel manager. When asked when she was coming back to work Rogers replied, ''[A]s soon as the doctor releases me.'' Rogers asked Jones whether she could speak to Park for the purpose of asking him whether she could work in the finishing department until her baby was older. According to Rogers, she met with Park and he said, ''I'll see to it Roger gets you a position over there.'' Later Jones phoned Rogers and told her that Park said that there wasn't anything for her in finishing. During the conversation Jones asked Rogers when she was returning to work. Rogers replied, ''my next appointment is July 20th at Doctor Wu's and he would tell me then when I should return back to work.'' Jones said that she would ''relay the message to Mr. Parks.'' This phone conversation occurred ''probably about the last of June.''[47]

After Rogers delivered the baby, she began hemorrhaging. Her doctor advised her to ''just . . . take it easy, and . . . wait awhile.'' On July 20, 1989, Rogers appeared for her doctor's appointment at which time the doctor gave her a statement dated ''7/20/89'' which indicated that she could return to work. Rogers carried the statement to the Respondent and gave it to Thomas. Thomas took the statement into the office. After a considerable length of time Thomas returned and handed the doctor's statement to Rogers. Thomas reported that Park was considering whether to rehire her. Rogers sat in the lobby for 3 hours at which time Thomas told her to go home and she would advise her of the decision the next day. The next day Thomas phoned Rogers and told her that the Respondent would not return her to work. Rogers asked for a reason. Thomas replied that she would ask Park and suggested Rogers phone her the next day. Rogers phoned Thomas but she would not talk with Rogers, however, Rogers was able to talk with Barbara Lee to whom Rogers voiced the opinion that she had been fired because she testified. Barbara Lee said that she would talk to Park. The next day Barbara Lee gave Rogers a message that Park said Rogers had not been fired. ''They're looking for a place to put you.'' Thereafter Rogers received no response to her phone calls. Rogers then decided to go to the plant. She saw Park in the parking lot. Park also saw her, however, when she asked to see Park, the answer was no. This occurred around August 8, 1989.

Rogers filed a charge with the Board on August 11, 1989. On September 19, 1989, Rogers was put back to work.

Thomas testified on cross-examination that Barbara Lee told her that ''they was trying to figure out why Ms. Rogers did not come to work when she was supposed to. Why did she wait so long, *until July 20th to bring the excuse stating that she was supposed to come back to work July the 20th*.'' (Emphasis added.) ''. . . it had something to do about double checking the doctor's excuse.''

Thomas further testified that a job would have been available on July 20, 1989, and that she had approved leave for employees beyond the initial date they were expected to return to work.

According to Thomas, Rogers was first discharged and then later Barbara Lee said she was not discharged. Rogers was the only employee who was terminated for overstaying maternity leave.

Park testified that he was the person who made the decision not to allow Rogers to return to work on July 20. His reason was as follows:

> Because she was supposed to return to work with a doctor's statement for that extended 20 days from 1st of July until the 20th of July, but she did not bring in doctor's excuse.[48]

[45] Prior to her delivery Rogers had experienced difficulties which were brought to the Respondent's attention. Park told her ''work when you can.'' She was transferred to the finishing department where the work was less strenuous.

[46] Thomas remembered that Rogers brought her baby to the plant, however, she denied that Rogers gave her a date on which she would return to work. Thomas' credibility was not enhanced by her answers to questions at least 15 times ''can't remember,'' ''I am not sure,'' ''I don't recall,'' ''can't say,'' or words to that effect.

[47] Jones remembered Rogers bringing her baby to the plant but did not remember discussing her returning to her job. Jones also remembered some telephone calls. According to Jones, one of the conversations concerned whether Rogers would be given a job in finishing, the job she held when she went on maternity leave. Thomas put Rogers on hold. Thomas contacted Pulley who said there was no job. Thomas relayed this information to Rogers. Later, another conversation occurred between Rogers and Jones regarding whether Rogers would return to finishing or knitting. Rogers had asked to speak with Park. Jones brought the matter to Park's attention who instructed Jones to tell Rogers that she ''could return to knitting.'' Jones passed on Park's response to Rogers. Jones conceded that there was ''no question'' that Rogers wanted to return to work.

[48] Rogers testified that she brought the doctor's excuse to the plant on July 20, 1989. Barbara Lee impliedly told Thomas that was the case. Barbara Lee

Park admitted that he knew that Rogers wanted to come back to work after her pregnancy.

Conclusions and Reasons Therefor

The credible record establishes that Rogers presented a doctor's excuse or statement on July 20, 1989, to the Respondent. Thus, the reason given by Park for Rogers discharge ''Because she was supposed to return with a doctor's statement for that extended 20 days from 1st of July until the 20th of July, but she did not bring the doctor's excuse'' was false.

Accordingly, I find that by its refusal to return Margaret Gail Rogers to employment on July 20, 1989, and its discharge of her violated Section 8(a)(1) and (4) of the Act.

In the case of *Best Products Co.*, 236 NLRB 1024, 1025 (1978), the Board opined: ''In *Shattuck Denn Mining Corporation v. N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966), the court stated that where the trier of fact finds that an asserted motive for discharge is false he can infer that there is another motive. 'More than that, he can infer that the motive is one that he employer desires to conceal—an unlawful motive—at least where the surrounding facts tend to reinforce the inference.'''

Having considered all the credible and relevant evidence in this case, I find that the Respondent discharged Rogers on July 20, 1989, because she testified as a witness in the proceedings on May 25, 1989, on behalf of the General Counsel and gave testimony adverse to the Respondent's position.

b. *Discharge of Margaret Gail Rogers on November 27, 1989*

Pursuant to the order reopening record dated February 12, 1990, as noted, a further hearing was held on March 12, 1990, at Mullins, South Carolina.

This hearing primarily concerned whether Margaret Gail Rogers was unlawfully discharged by the Respondent on November 27, 1989, in violation of Section 8(a)(4) of the Act. Rogers first testified on May 25, 1989. Thereafter, as I found, supra, she was discharged on July 20, 1989, by the Respondent for giving testimony in this proceeding.

In September 1989 Rogers received a certified letter from the Respondent requesting her return to employment. Rogers went to the plant pursuant to the letter where she talked to the personnel assistant, Barbara Lee. Lee told Rogers to come back to work on the A shift. (Rogers had worked on the A shift.) However, when Rogers returned to work Lee informed her that there were no openings on the A shift. Rogers was then assigned to the B shift. According to Rogers, assignment to the B shift caused an inconvenience in obtaining babysitters. She did not have this problem when she worked the A shift.

After returning to work, according to Rogers, the Koreans were ''hostile.'' On one occasion Rogers was told by Supervisor Kim that she could only visit the bathroom on breaktime. This requirement, which did not apply to other employees was later rescinded. Additionally she was moved from machine to machine which caused a lowering of her earnings.

Rogers worked about 3 weeks when she became ill. The last day she worked, October 9, 1989, she ''couldn't hardly walk.'' She returned to Dr. Wu on October 10, 1989, her day off, for an exploratory examination. After the exploratory examination Dr. Wu ascertained the cause of Rogers' distress and placed her immediately in the hospital and performed a hysterectomy (Rogers had not anticipated such happening). The next day when Rogers ''woke up from surgery'' she called the plant and talked to Giles Campbell, her supervisor. Campbell said he would report her absence but she should also inform Frozana Thomas. Rogers phoned Thomas from the hospital room. Rogers related that she was in the hospital for an operation. Thomas advised Rogers to procure a doctor's excuse so that there would be no problems about her leave ''this time.'' Rogers asked Dr. Wu's nurse to mail an excuse to the Respondent which was accomplished on October 13, 1989. Thereafter when Thomas was released from the hospital she ''carried'' another doctor's excuse to the Respondent because Thomas had said she had not received the doctor's excuse mailed by Dr. Wu's nurse, Ms. Blackburn. (The first excuse was in the Respondent's files.) Rogers was granted medical leave until November 27, 1989.

On November 27, 1989, Rogers returned to the plant both to pay her insurance and go back to work. Thomas saw Rogers waiting to pay her insurance and asked her to come in her office where Thomas informed Rogers that she was fired. Rogers asked ''Why?'' and Thomas answered, ''. . . you knew your job wasn't guaranteed with us to start with.'' Rogers asked for a statement. Thomas gave her the following statement dated November 27, 1989:

> To whom it may concern:
>
> Margaret G. Rogers was hired Feb. 22, 1988 as an [sic] full time employee. As of Nov. 27, 1989, Ms. Rogers was terminated.

Prior to Rogers testifying on May 25, 1989, she had no apparent problems with medical leaves. Nor had she received any warnings or reprimands regarding any of her medical leaves.

Yong Suk Park[49] testified that he participated in the discharge of Rogers. He testified that he was ''concerned about the number of medical leaves she had taken.''[50]

Park further testified, ''In Margaret Rogers case it wasn't lay off. It was terminate . . . . according to our policy we don't have to necessarily hire her back after her leave. We don't guarantee the ones who have been on leave.''

On cross-examination Park testified:

> Margaret Rogers has been a good employee in terms absentees [sic] and occasionally she came to stop [sic] management including myself and make good suggestions for the betterment of the plant operation and overall speaking Margaret Rogers is an asset employee—she has a good skill, but she had a problem with the medical leave and to me even though she was an excellent employee, she had too many leaves and then she—after her fourth leave she wanted to come back, but I stopped it because I said that's four (4) too many, but

was not called as a witness. I credit Rogers. I do not believe Park; his reason was false.

[49] Park left the employment of the Respondent on February 27, 1990.

[50] Park testified that he was given the number from his assistants ''five (5) times in two (2) years.''

> you see my lawyer advised me to have her back and so I put her back and right after she was asking for another medical leave and I thought to myself, this is too much and this time I rather not have her back.

Apparently on second thought, Park testified, ''but she's not really terminated. We may or may not call her back later. She's not actually terminated. She's not on a termination status.''

Later in his testimony, Park testified, ''I told my assistant [Thomas] . . . the reasons for—the reason that we don't have her back here is because of the number of leaves.''[51] ''What I told her is don't have her back . . . . I didn't tell her terminate her . . . . I gave her reason, because of number of medical leaves.''

Rogers was the only employee who was ever discharged for taking too many medical leaves.

On November 27, 1989, the date Rogers sought to return to work, the Respondent was laying off employees. However, these employees who were being laid off were seasonal or temporary employees whereas Rogers was a permanent employee. Having been granted sick leave it would appear that her return to employment normally would have occurred.[52]

Park's vacillation regarding the manner Rogers was treated when she attempted to return to work creates a strong inference that his motive was ulterior. In this respect it is unclear in his testimony whether he discharged her or laid her off. Moreover, he volunteered that had she been ''completely healed'' and ''healthy'' ''it is a possibility we'll have her back.'' This indeed seems a strange comment for him to make because he made no effort to ascertain whether she was in that state when he discharged her. Additionally because she was an asset and an excellent employee she was the kind of employee most employers would have shown leniency under the circumstances revealed in the record. Thus it seems Park utilized Rogers' absence for medical reasons as a pretext for her discharge. Her discharge was clearly a continuation of the Respondent's course of conduct which it had chosen to punish employees engaging in activities which were protected by Section 8(a)(4) of the Act. Accordingly, I find that by its discharge of Rogers on November 27, 1989, the Respondent violated Section 8(a)(4) of the Act. I am convinced that Rogers would have been put back to work had she not testified in these proceedings. Cf. *Wright Line*, supra.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act for jurisdiction to be exercised here.

2. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1).

3. By unlawfully discharging Chyrel Burroughs on September 20, 1988; Michael Moody, on October 3, 1988; Steven Anthony Smith on October 5, 1988; and Gena Hemingway, on October 5, 1988, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. By discharging Margaret Gail Rogers on July 20, 1989, and on November 27, 1989, and by discharging Lester Smith on June 6, 1989, for giving testimony in these proceedings for the General Counsel, the Respondent violated Section 8(a)(1) and (4) of the Act.

5. The aforesaid unfair labor practices are unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having also found that the Respondent unlawfully discharged Chyrel Burroughs, Michael Moody, Steven Anthony Smith, Gena Hemingway, Margaret Gail Rogers, and Lester Smith and has failed and refused to reinstate them in violation of the Act, it is recommended that the Respondent remedy such unlawful conduct. In accordance with Board policy, it is recommended that the Respondent offer the above-named persons immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, dismissing, if necessary, any employees hired on or since the date of their discharges to fill the positions, and make them whole for any loss of earnings they may have suffered by reason of the Respondent's acts here detailed, by payment to them of a sum of money equal to the amount they would have earned from the date of their unlawful discharges to the date of valid offers of reinstatement, less their net interim earnings during such periods, with interest thereon, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]

[51] Thomas did not give this significant information to Rogers which raises the inference that it was Park's afterthought.

[52] Rogers' supervisor told her that she would ''have a position, when you come back, if they grant you a leave of absence.''